



Army EEO, Anti-Harassment and No FEAR Training for Supervisors





This course contains mandatory training from a supervisory perspective regarding:

- Equal Employment Opportunity
- Army anti-harassment policy
- No FEAR
- Prohibited personnel practices, including whistleblower protection laws



Equal Employment Opportunity



EQUAL EMPLOYMENT OPPORTUNITY POLICY

The Army is committed to ensuring equal opportunity in employment for Army civilian employees and applicants.





EQUAL EMPLOYMENT OPPORTUNITY POLICY

The Army is committed to developing and maintaining a professional workplace in which all individuals are treated with dignity and respect. This includes ensuring an environment for Army civilian employees free of discrimination in employment on the basis of:

- *Race*
- *Color*
- *Religion*
- *Sex (including pay, pregnancy, childbirth, or related medical conditions)*
- *National origin*
- *Age (forty and over)*
- *Disability*
- *Genetic information*
- *Harassment on any of the above grounds, including sexual harassment*
- *Reprisal or retaliation for opposing discrimination or participating in discrimination complaint activities, such as being a witness for another employee.*



EQUAL EMPLOYMENT OPPORTUNITY POLICY

Federal antidiscrimination laws protect employees from illegal discrimination in the terms, conditions, and benefits of their employment. Some examples of these are:

- Hiring
- Promotion
- Reassignments
- Pay
- Leave
- Awards
- Performance Evaluations
- Training
- Job Classification
- Reprimands
- Suspensions
- Terminations



EQUAL EMPLOYMENT OPPORTUNITY POLICY

As a supervisor, you should make sure you have legitimate, non-discriminatory reasons for every personnel action you take.



Equal Employment Opportunity - Race, Color, National Origin

- Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features).
- Color discrimination involves treating someone unfavorably because of skin color or complexion.
- National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).





Equal Employment Opportunity – Religion

- Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.
- An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.





Equal Employment Opportunity – Religion

- The law requires reasonable accommodation of an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the Army's operations. This means Army may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.





Equal Employment Opportunity – Sex

- Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex.
- Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.





Equal Employment Opportunity – Age

- Age discrimination involves treating someone (an applicant or employee) less favorably because of his/her age.
- The Age Discrimination in Employment Act only forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40.





Equal Employment Opportunity - Disability

- Disability discrimination occurs when a qualified employee or applicant with a disability is treated unfavorably because he/she has a disability.
- Disability discrimination also occurs when an applicant or employee is treated less favorably because he/she has a record of a disability (such as cancer that is controlled or in remission) or because he/she is regarded as having a physical or mental impairment (even if he/she does not have such an impairment).





Equal Employment Opportunity - Disability

- As a supervisor, you are responsible for providing reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the Army ("undue hardship").
- An employee who believes he/she needs a reasonable accommodation for a disability may make an oral or written request to you. The request does not have to use the term "reasonable accommodation."





Equal Employment Opportunity - Disability

- You may be able to grant the request for reasonable accommodation immediately. If not, you must engage in an interactive process with the employee to exchange information and search for solutions. At the end of this process, you will let the employee know whether his/her request has been granted or denied.
- You must respond to a reasonable accommodation request in a timely fashion. Ordinarily, this decision must be made within 30 business days from the date you receive the request.
- Information to assist you with the reasonable accommodation process can be found in the U.S. Army Procedures for Providing Reasonable Accommodation for Individuals with Disabilities (March 17, 2009).
- An accommodation does not have to be specifically what an employee requests, as long as the accommodation is effective. The request must also be reasonable. For example, requests to eliminate essential job functions, to change supervisors or to lower performance standards are not reasonable accommodations.





Equal Employment Opportunity - Disability

- Information related to a request for accommodation or the fact that an employee is receiving an accommodation may be shared only with those who have a need to know.
- Should questions arise from coworkers about what is perceived as “different” or “special” treatment of an accommodated employee, you should explain the policy of assisting any employee who encounters difficulty in the workplace. You may also find it helpful to point out that many of the workplace issues encountered by employees are personal and it is the Army’s policy to respect employee privacy.
- Maintain information about reasonable accommodations, including medical information, in a secure location separate from other personnel information.





Equal Employment Opportunity - Association Discrimination

Discrimination also can involve treating people unfavorably because they associate with others of a different group (such as association with someone of a different race or a person with a disability).



EEO – Genetic Information Discrimination

- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), prohibits the use of genetic information in making employment decisions.
- Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.





EEO – Genetic Information Discrimination

- A supervisor may not request genetic information, such as family medical history from employees.
- Supervisors might inadvertently acquire genetic information because an employee volunteers it or through overhearing others talk about it. This is not unlawful because the supervisor is not seeking out the information. To the extent possible, however, supervisors should seek to avoid participating in conversations where genetic information might be revealed.





Michael is a supervisor. Amanda, who works for him, comes into his office and indicates her relative died from a disease, that she has just been diagnosed with the same disease and needs to take leave.

Michael tells Amanda he is sorry to hear this. He says he will work with her and the office manager to assist with leave options. Michael tells Amanda to let him know if she needs any other assistance with her job during the treatment.

Michael acted appropriately by keeping his remark about the medical condition brief and keeping the conversation focused on work issues. Although it is difficult to do, supervisors should avoid engaging in a conversation about the specifics of the medical condition or the relative's medical condition.





Equal Employment Opportunity – Retaliation

- It is illegal to retaliate against applicants or employees because they filed a charge of discrimination, because they complained about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).



Equal Employment Opportunity

If an employee you supervise has contacted the EEO office with a complaint or participated in EEO activity, you SHOULD:

- Continue to work with the employee in a normal manner.
- Cooperate with the counselor or investigator.
- Contact your servicing Staff Judge Advocate for assistance and discuss the matter only with the Staff Judge Advocate. The Staff Judge Advocate represents the Army, but can assist you through the process.
- Afford the employee a reasonable amount of time to present his/her complaint and respond to agency requests for information.
- Consider whether mediation would be helpful in resolving the complaint. Working through concerns with a neutral third party may result in creative solutions.





Equal Employment Opportunity

If an employee you supervise has contacted the EEO office with a complaint or participated in EEO activity:

- DO NOT confront the employee about the complaint or try to persuade the employee to drop the complaint.
- DO NOT discuss the complaint with colleagues. Instead, try to keep the matter as confidential as possible.
- DO NOT try to avoid the employee. Instead, you should conduct business as usual.





Equal Employment Opportunity Scenario

Bob filed an EEO complaint after being given a negative performance appraisal, alleging that his supervisor Tom discriminated against him. Tom had legitimate, non-discriminatory reasons for giving Bob the poor appraisal.

When Tom learns of the complaint, Tom holds a closed door meeting with his colleague Pam. Tom closes his office door, but the walls are thin and everyone in the vicinity, including Bob, can hear him say things like, "How could he do this?" "I have given Bob every opportunity." "This is Bob's insurance policy - he knows he is about to be fired."

Later, Tom fires off an e-mail to Bob, saying that going forward Bob should only communicate with him by e-mail. Tom is nervous that Bob will use anything he says at the EEO hearing and also wants evidence to use himself. Tom further gives Bob only minimal work to do, feeling he can no longer trust Bob.

Tom believes he did not discriminate and is upset. However, he did not handle the situation appropriately. Tom's actions could turn what otherwise was an unfounded complaint into a successful retaliation claim.

Tom should not have discussed the matter with a colleague, but immediately should have consulted his servicing Staff Judge Advocate. Tom needs to interact with Bob as normally as possible. The servicing Staff Judge Advocate can help Tom continue to address Bob's performance in a constructive and non-retaliatory manner.





Equal Employment Opportunity

- **If You Believe You Have Been Subjected to Unlawful Discrimination, Harassment or Retaliation:**
- You must contact your EEO Office for the assignment of an EEO counselor within 45 calendar days from when you first became aware of the alleged discrimination.
- The EEO counselor will try to resolve the complaint and will offer you an opportunity to use the alternative dispute resolution process to resolve your complaint. If the complaint is not resolved, you will be provided a Notice of Right to File a Complaint.
- Employees covered by a negotiated bargaining agreement which permits allegations of discrimination may elect to proceed under the negotiated bargaining agreement, rather than filing a formal complaint of discrimination with the EEO Office. You cannot do both.



Equal Employment Opportunity

The Federal laws enforced by the EEOC that protect employees from employment discrimination are:

- Title VII of the Civil Rights Act of 1964
- Pregnancy Discrimination Act of 1978
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967
- Rehabilitation Act of 1973
- Genetic Information Nondiscrimination Act of 2008



Harassment



Harassment

ARMY ANTI-HARASSMENT POLICY FOR THE WORKPLACE

- Workplace harassment based on race, religion, color, sex, national origin, age, disability, genetic information, reprisal or other impermissible basis is not acceptable in either the military or civilian ranks.
- Harassment includes, but is not limited to, any offensive conduct such as slurs, jokes or other verbal, nonverbal or physical conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive or hostile environment.
- Even if a single utterance, joke or act does not rise to the level of actionable harassment under the law, such conduct is contrary to Army values.



Harassment

- Sexual harassment is a form of sex discrimination. Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
- (a) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career; or
- (b) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
- (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.



Harassment

Who can commit workplace harassment?

- The harasser can be a co-worker, the employee's supervisor, a supervisor in another area, or someone who is not an employee of the Army, such as a client, contractor or customer.
- Both the employee and the harasser can be either a woman or a man, and the employee and harasser can be the same sex.





Harassment

Examples include but are not limited to:

- **Verbal Conduct** that could include
 - Racial or sexual epithets
 - Foul language
 - Unwanted sexual flirtations
 - Ethnic jokes
 - Derogatory statements or slurs
- **Physical conduct** that includes improper touching or sexual assault; or
- **Visual harassment** that could include racially or sexually explicit or derogatory posters, cartoons or drawings, obscene gestures, or items such as a noose.





Harassment

EFFECTS OF HARASSMENT

- Discipline or loss of job if you engage in harassment
- Lower productivity and morale
- Emotional and physical pain
- Higher turnover
- Higher costs for hiring/training
- Potential high attorneys fees and damage awards
- Embarrassment to the Army
- Degrades mission readiness





Harassment

If you are subjected to harassment,

- Promptly report your concerns through your chain of command or a supervisor to whom you feel comfortable reporting so that your command can investigate and take steps to end the harassment.
- If desired, contact your servicing EEO office to file a complaint within 45 days after you first became aware of the harassment.





Harassment

If you receive a complaint of harassment,

- It is your responsibility as a supervisor to take prompt and appropriate action.
- You must immediately conduct an inquiry appropriate for the circumstances. Depending on the complaint, this could range from a discussion with the alleged harasser to an investigation under the provisions of AR 15-6.
- You must immediately report complaints involving sexual assault to Army Criminal Investigation Command, regardless of severity.
- You may need to take steps during the inquiry to protect the person complaining from further harassment.
- If harassment occurred, it is your responsibility to take corrective action designed to end the harassment. Discipline, which may include termination, may be warranted depending on the conduct. You also must take progressively severe action if the harassment does not stop.
- You should consult with your servicing Staff Judge Advocate, who can advise you on the appropriate course(s) of action.





Harassment

SCENARIO

A supervisor receives the following complaint from Ingrid, who works in a pod of cubicles:

- Ingrid's co-workers in the area use the term "b--" to refer to women with whom they have disagreements at work.
- The co-workers mock a mail delivery worker with physical and mental disabilities after he leaves the area by laughing about and imitating his disabilities.
- Nearly every day the co-workers listen to a crude morning radio show featuring sexual topics and ethnic jokes. One told Ingrid to "wear earplugs" when she tried to change the station.
- One co-worker displays a woman in a swimsuit as his screen saver.

All these actions constitute prohibited harassment under Army's policy. This is true even if the behavior is not directed towards Ingrid or is not intended to offend her. It also does not matter that the mail delivery worker is not aware of the behavior.

The supervisor immediately must take steps to investigate Ingrid's complaint. If the complaint is substantiated, the supervisor must take appropriate corrective action to end the behavior, including any necessary disciplinary action. The servicing Staff Judge Advocate can assist the supervisor with these actions.





Harassment

SCENARIO

Olivia gave her co-worker Jake a note saying she would like to go out with him. Jake told Olivia he was not interested and was not looking for anything like that right now.

Olivia gave Jake a second note asking him to give her a chance, which Jake discarded. Olivia then approached Jake and gave him a photo of herself. Jake told Olivia again he was not interested. Olivia continued to give Jake notes for several months, telling Jake she had been thinking about him and dreaming about him. Olivia also had co-workers deliver messages to Jake with requests to go on dates and saying that she was going to "get him no matter what." After six months, Olivia asked Jake for a date in front of a customer, embarrassing both Jake and the customer.





Harassment

SCENARIO

Olivia's actions were harassing. While the initial polite request to go on a date with Jake was not harassment, Olivia persisted even after Jake indicated he was not interested.

If Jake brings Olivia's behavior to his supervisor's attention, the supervisor must take action designed to end Olivia's behavior and take escalating steps if her behavior does not stop.

For example, if Jake brings it to the supervisor's attention after just the notes, nothing more might be required than telling Olivia that Jake finds her behavior unwelcome and that she needs to stop. The supervisor should document his/her actions and follow up with Jake to make sure Olivia's conduct does stop.

If Olivia denies the conduct, does not agree to stop the conduct, does not stop the conduct, or if Jake later reports more serious behaviors, more formal and more serious measures would be required.





Harassment

SCENARIO

Angela is one of the oldest employees in the office. Her supervisor has asked her when she plans to retire. In meetings to discuss hiring actions, the supervisor has made comments about the office needing "younger blood." Angela's co-workers told Angela that "she was old enough to be their mother" and one co-worker commented that some shoes in a catalog were "old lady shoes like Angela wears." On Angela's birthday, her supervisor and co-workers decorated her office with black balloons, black streamers and an "over the hill" banner. They also surprised her with a cake and gave her a "Happy Birthday" card. The cake and card could be given to someone of any age.

The cake and card are fine to celebrate an employee's birthday. However, the age-themed decorations and comments constitute harassment based upon age.

It does not matter whether Angela does not seem to mind the age-based decorations and comments. Angela actually may feel uncomfortable with the attention paid to her age, but may pretend that it does not bother her. Also, even if the decorations and comments do not bother Angela, they may be offensive to other older employees.





Harassment

SCENARIO

Sara makes the following complaint to her second-level supervisor about her first level supervisor, Major John Smith:

While Sara and MAJ Smith were attending a conference, MAJ Smith insisted on walking Sara back to her hotel room after a group dinner, despite her protests. When they arrived at Sara's room, he pushed his way inside. MAJ Smith pulled her onto the bed and attempted to engage in sexual activity, but Sara freed herself.

MAJ Smith's actions constitute prohibited harassment under Army policy. MAJ Smith's actions also constitute sexual assault under the Uniform Code of Military Justice.

Because Sara is complaining about actions that would be a sexual assault under the Uniform Code of Military Justice, the second-level supervisor must immediately report the complaint to the Army Criminal Investigation Command.

The second level supervisor also should immediately contact his/her servicing Staff Judge Advocate on appropriate steps to take to protect Sara from further harassment while the Army Criminal Investigation Command is investigating.





Prohibited Personnel Practices



Prohibited Personnel Practices

The Civil Service Reform Act of 1978 promotes overall fairness in Federal personnel actions.

A Federal employee who is authorized to take, direct others to take, recommend or approve any personnel action may **not**:

- Discriminate for or against an employee or applicant based on race, color, religion, sex, national origin, age, mental or physical disability, marital status or political affiliation
- Ask for or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics
- Coerce the political activity of any person or take action in reprisal for refusing to engage in political activity
- Deceive or willfully obstruct anyone from competing for employment
- Influence anyone to withdraw from competing for a job to help or hurt the employment prospects of another person
- Give an unauthorized preference or advantage to anyone that improves or hurts the employment prospects of an employee or applicant

(continued on next page)



- Hire, promote, or advocate the hiring or promotion of relatives (nepotism)
- Engage in reprisal or retaliation for whistleblowing
- Take, fail to take, or threaten to take a personnel action against an employee or applicant for:
 1. Filing an appeal, complaint, or grievance
 2. Testifying for or assisting another in an appeal, complaint, or grievance
 3. Cooperating with or providing information to the Special Counsel or to an Inspector General, or
 4. Refusing to obey an order that would require the individual to violate a law
- Discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others.
- Knowingly take or fail to take, recommend, or approve a personnel action that would violate a veteran's preference requirement
- Take or fail to take a personnel action that would violate any law, rule, or regulation implementing or directly concerning merit system principles





Prohibited Personnel Practices

- The Office of Special Counsel (OSC) is an independent Federal agency that investigates complaints of prohibited personnel practices other than those enforced by EEOC under the Civil Service Reform Act of 1978, including discrimination on the basis of:
 - Marital status
 - Political affiliation or activities
 - Sexual orientation
 - Conduct that does not adversely affect employee performance
 - Whistleblower retaliation





Whistleblower Protections





Whistleblower Protections

A federal employee authorized to take, direct others to take, recommend or approve any personnel action may not retaliate against an employee for protected whistleblowing.

Whistleblowing is when an employee or applicant discloses information that he or she reasonably believes is evidence of:

- A violation of a law, rule or regulation
- Gross mismanagement
- Gross waste of funds
- An abuse of authority, or
- A substantial and specific danger to public health or safety
- Disclosures may be made to superiors in the chain of supervision, Inspectors General, Congress, law enforcement officials, agency ethics officials, or any other agency officials responsible for ensuring integrity and acting against malfeasance within the agency.





Whistleblower Protections

- The Office of Special Counsel (OSC) also provides a secure channel through which employees may make confidential disclosures (“whistleblowing”).
- OSC evaluates the disclosures to determine whether there is a substantial likelihood that one of the categories listed above has been disclosed. If such a determination is made, OSC has the authority to require the head of the agency to investigate the matter.





Whistleblower Protections

- Sometimes it may be against the law or an Executive Order to disclose certain information, especially when it is in the interest of the national defense or the conduct of foreign affairs to keep the information secret.
- If disclosure of the information is restricted by law or Executive Order, it is only protected if the information is given to the Special Counsel, the Inspector General, or comparable agency official.





Whistleblower Protections

How to File A Complaint with OSC

If you believe that you have been subjected to whistleblower retaliation or other prohibited personnel practice you may access the forms from the OSC website and either file your complaint to OSC online or print the forms and submit by mail.

OSC requires the use of specific forms to file a complaint **not** submitted via online form. These forms are available on the OSC Web site.

For more information, contact:

<http://www.osc.gov>

U.S. Office of Special Counsel
1730 M Street NW, Suite 218
Washington, DC 20036-4505
Telephone: 202-254-3600





Merit Systems Protection Board





Merit Systems Protection Board

The Merit Systems Protection Board (MSPB) is an independent Federal agency established to protect Federal merit systems against partisan political and other prohibited personnel practices and to protect Federal employees against abuses by management.

The MSPB has the authority (in part) to review and issue rulings on:

- Appeals of personnel actions such as removals, suspensions of more than 14 days, furloughs and demotions
- Appeals of administrative decisions affecting rights or benefits under the Civil Service Retirement System or the Federal Employees' Retirement System
- Complaints filed under the Whistleblower Protection Act, the Uniformed Services Employment and Reemployment Rights Act, and the Veterans Employment Opportunities Act, and
- Cases brought by OSC





Merit Systems Protection Board

If you believe that a personnel action has been taken on the basis of your race, color, national origin, sex, age, or disability, or in retaliation for opposing such discrimination or participating in the discrimination complaint process, and that personnel action is appealable to the MSPB, you may choose to file a complaint with EEO, or file an appeal with the MSPB, but not both.

The appeal must be filed with the MSPB within 30 days of the effective date of the personnel action.

Information regarding procedures for filing MSPB appeals can be found on the MSPB Web site at:
<http://www.mspb.gov>





Negotiated Grievance Procedure



Negotiated Grievance Procedure

- Employees under a bargaining unit agreement may be able to file a complaint of discrimination through a union-negotiated grievance procedure





Discrimination and Retaliation Are Costly to Your Activity

- The No FEAR Act requires each Federal agency to pay for awards, judgments, and settlements involving discrimination and whistleblowing from its own budget
- This means **your activity will be responsible** for paying out of its own budget for adverse awards, judgments and settlements in Federal lawsuits and the administrative complaint process.





1. Which of the following is NOT a prohibited personnel practice:
 - A. Violating a veteran's hiring preference
 - B. Considering employment recommendations based on personal knowledge in a hiring action
 - C. Retaliating against an employee or applicant for reporting a possible violation of the law
 - D. Deciding not to hire a qualified applicant because he or she has a mental disability



2. Whistleblowing is when an employee or applicant discloses information that he or she reasonably believes is evidence of:
 - A. A violation of a law, rule or regulation
 - B. Gross waste of funds
 - C. A substantial and specific danger to public health or safety
 - D. All of the above



3. A person experiencing prohibited harassment must promptly report their concerns through their chain of command or a supervisor with whom they feel comfortable reporting the experience to so that the command can investigate and take steps to end the harassment.
 - A. True
 - B. False



4. A supervisor who receives a complaint of harassment does not need to take any action other than to refer the person complaining to the Staff Judge Advocate or EEO.

A. True

B. False



5. An individual who wants to file an EEO complaint must contact the EEO office within 45 calendar days of the date when he or she knew or should have known about the alleged discriminatory act.

A. True

B. False





6. An employee who believes he/she needs a reasonable accommodation for a disability should make a request to his/her supervisor.
 - A. True
 - B. False



7. It is illegal to retaliate against employees because they complained about discrimination or harassment or because they participated in an employment discrimination proceeding.

A. True

B. False



8. Army's anti-harassment policy prohibits not only sexual harassment, but also harassment based on race, color, religion, sex, national origin, age, disability, reprisal, genetic information or other impermissible basis.

- A. True
- B. False



9. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history).

A. True

B. False





10. It is helpful for a supervisor who is the subject of a discrimination complaint to confront the employee and try to persuade the employee that the employee is wrong.

- A. True
- B. False



11. A supervisor who receives a complaint of harassment does not need to take any action other than to refer the person complaining to Labor-Management Employee Relations or EEO.

- A. True
- B. False



1. B
2. D
3. A
4. B
5. A
6. A
7. A
8. A
9. A
10. B
11. B